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UNITED STATES DISTRICT COURT  
FOR THE CENTRAL DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

GABRIEL ZENDEJAS-CHAVEZ,

Defendant.

No. CR 18-CR-173-GW

DEFENDANT CHAVEZ'S REPLY IN  
SUPPORT OF MOTION TO DISMISS  
INDICTMENT

Defendant Gabriel Zendejas-Chavez, by and through his counsel, Meghan Blanco, files the attached reply in support of his motion to dismiss.

This reply is based on the attached memorandum of points and authorities, the declaration of Mr. Chavez, the previously filed motions to dismiss, and any other evidence the Court wishes to hear.

Respectfully Submitted,

Dated: August 20, 2024

//s// Meghan Blanco  
MEGHAN BLANCO  
Attorney for  
GABRIEL ZENDEJAS-CHAVEZ

MEMORANDUM OF POINTS AND AUTHORITIES

I. Introduction

The government possessed 1000s of pages of exculpatory evidence prior to Mr. Chavez's 2022 trial. Prosecutors reviewed reports that contained contradictory statements by their own trial witnesses. They reviewed reports that showed their own timeline of events regarding Mr. Chavez's alleged involvement in a conspiracy to step-down and murder GE, DC and AE was wrong, and that suggested their own star witnesses' testimony regarding those events - and by extension Mr. Chavez's involvement in those events - could not be true. They reviewed reports that showed witness [REDACTED] lied about his interactions with Mr. Chavez while in CDCR custody and while housed, temporarily, at LACJ, that implicated Mr. Chavez in two murders.<sup>1</sup>

Yet, before Mr. Chavez's 2022 trial, prosecutors only produced the portions of those reports that helped their case. All the while, they lied to the Court and defense counsel about having reviewed and produced "all discoverable information" from the files. In the intervening two years, while Mr. Chavez steadfastly asserted

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<sup>1</sup> By knowingly suppressing [REDACTED] 2019 Debrief Report and Mr. Hinojos's LACJ movement records, one could reasonably conclude that prosecutors knowingly suborned perjured testimony from [REDACTED] at trial when they allowed him to testify about Mr. Chavez's involvement in two murders.

1 his right to a speedy retrial, the government opposed each of Mr.  
2 Chavez's trial demands. And during this time, it utilized  
3 suppressed information to supersede with a new charging document  
4 that substantially changed its theory of the case.  
5

6 They lied about the existence of exculpatory evidence before  
7 trial. They lied about it during it trial. And they are lying  
8 about the scope of their misconduct now. Dismissal is the only  
9 remedy that can cure the intentional harm the prosecution caused to  
10 Mr. Chavez.  
11

## 12 II. Argument

### 13 A. The Suppressed Evidence Was Material

14 The government concedes, as it must, that it suppressed  
15 exculpatory evidence from Mr. Chavez prior to his 2022 trial.  
16 Shockingly, however, they argue that the exculpatory evidence that  
17 they suppressed was not material. The facts and law do not support  
18 their conclusion.  
19

### 20 ***Stepping down of AE***

21 At Mr. Chavez's 2022 trial, the government argued that AE was  
22 placed on disregard status in early 2014 and that his associates,  
23 including GE and DC, were placed on the green light list as a  
24 result. The timeline of events regarding the stepping down of AE,  
25 and plots to murder AE, GE, and DC, as explained by the government's  
26 cooperating witnesses and case agents in Mr. Chavez's 2022 trial,  
27

1 began around February 2014 and was generally complete by the time  
2 Peanut Butter moved to Mexico (May 9, 2014) and an individual named  
3 Polar Bear was arrested and remanded to LACJ custody (April 15,  
4 2014). Evidence that the government elicited during Mr. Chavez's  
5 2022 trial, to establish this timeline, included the following:  
6

7 **The Testimony of [REDACTED]**

8 During [REDACTED] direct examination, the government  
9 elicited damning testimony regarding Mr. Chavez's alleged  
10 involvement in "stepping down" AE between February and April 2014:  
11

12 AUSA Ellison: And you have also mentioned different levels of  
13 consensus needed within EME to make decisions. What level of  
14 consensus would you need to stripout a Mexican Mafia member like  
15 Turi and then kill him?

16 Answer: It would be a group decision within the Mexican Mafia.  
17 [REDACTED] transcripts at 783.  
18

19 AUSA Ellison: What was Fox's opinion on Turi?

20 Answer: That he agreed with Chino and the other members.

21 AUSA Ellison: You mentioned before that, you know, Mr. Chavez  
22 communicates to you that these members want Turi stripped. You  
23 mentioned before that the consequence of that is death.

24 Answer: Yes

25 [REDACTED] transcripts at 783.  
26  
27  
28

1 Answer: He came and expressed to me that a decision had been  
2 made and Turi was to be stripped of his membership and his  
3 territories were to be divided among the members of the Mexican  
4 Mafia.

5  
6 AUSA Ellison: When you said he told you a decision was made to  
7 strip out Turi and step him down, who is "he"?

8 Answer: Chavez.

9 [REDACTED] transcripts at 784.

10 AUSA Ellison: How did you learn of Turi being stripped of his  
11 EME membership?

12 Answer: Through Chavez.

13 [REDACTED] transcripts at 750.

14 [REDACTED] went into protective custody May 28, 2014 and had  
15 no communication with Mr. Chavez or defendant Landa-Rodriguez after  
16 that point. Thus, according to [REDACTED] trial testimony, by  
17 May 28, 2014, "a group decision" had been made to strip AE of his  
18 territories and kill him. He further claimed that Mr. Chavez told  
19 him this and that Mr. Chavez confirmed the vote during visits with  
20 EME members at Pelican Bay sometime in April 2014.

21 Testimony of [REDACTED]

22 [REDACTED] testified about a meeting that he attended on  
23 February 4, 2014. He claimed that issues regarding AE and GE were  
24 discussed at that meeting. He also testified about attending two-

1 to-three additional meetings where he and others discussed stripping  
2 AE of his territories and killing his soldiers, including GE and DC.  
3 These meetings were in person and Peanut Butter (who moved to Mexico  
4 by May 9, 2014) attended two of them. By the time Polar Bear was  
5 arrested (April 15, 2014), the group had already attempted to kill  
6 GE. He testified that the final decision to strip AE of his yards  
7 and kill GE was tied to GE ordering the stabbing of new unindicted  
8 coconspirator-58, aka Dopey:<sup>2</sup>

10 AUSA Marmaro: Did Turi Estrada have any brothers?

11 Answer: Yes.

12 AUSA Marmaro: What brothers did he have?

13 Answer: I knew George Estrada, aka Domingo.

14 AUSA Marmaro: Domingo Estrada?

15 Answer: Yes.

16 AUSA Marmaro: What role did Domingo Estrada have working  
17 for Turi?

18 Answer: He was his little brother, also his spokesperson.

19 AUSA Marmaro: Spokesperson on Mexican Mafia things?

20 Answer: Yes.

21  
22  
23  
24 <sup>2</sup> [REDACTED] 2022 trial testimony was the first time the  
25 government disclosed a connection between Hinojos and the stepping  
26 down of AE. Prior to hearing [REDACTED] testimony, Mr. Chavez did  
27 not know Hinojos had been stabbed or that his stabbing related to  
issues with Turi. Mr. Chavez did not learn when Dopey was stabbed  
until the government produced CDCR reports of the stabbing in  
various productions between late 2023 and last week.

1 AUSA Marmaro: Did you know a person by the moniker of  
2 Radio?

3 Answer: Yes.

4 AUSA Marmaro: And who's Radio?

5 Answer: His real name was David Cortez.

6 AUSA Marmaro: And what was David Cortez's or Radio's role?

7 Answer: He was under Turi for a long time, then he started  
8 claiming he was a Carnal.

9 [REDACTED] Transcripts at 1762.

10 AUSA Marmaro : Did you then -- were you then invited to a  
11 meeting to talk about the Estradas? (Asking about the  
12 February 4, 2014 meeting)

13 Answer: Yes, the following day.

14 AUSA Marmaro: And where was the meeting going to take  
15 place?

16 Answer: It was at the lawyer's office -- at the  
17 restaurant, next to his office, I mean.

18 AUSA Marmaro: What is that restaurant called?

19 Answer: Zendejas Bar and Grill.

20 [REDACTED] Transcripts at 1770.

21 AUSA Marmaro: How long did the meeting last, in total?

22 Answer: Minimum of two hours, I believe.

23 [REDACTED] Transcripts at 1775.

24 AUSA Marmaro: Did you attend any other meetings with Mr.  
25 Chavez at that time period?

26 Answer: Yes.



1 AUSA Marmaro: Just to be clear, we're talking late winter,  
2 spring, 2014?

3 Answer: Yes.

4 AUSA Marmaro: Where was the meeting?

5 Answer: The second one was at a restaurant in Moreno  
6 Valley.

7 AUSA Marmaro: Who was at that meeting?

8 Answer: It was Gabriel Zendejas, myself, Malo, Huero  
9 Vargas, Peanut Butter, Gerry Tapia, Ere, and some other  
old man called his name was Marcos, I believe.

10 [REDACTED] Transcripts at 1781.

11  
12 AUSA Marmaro: So let's turn back to the Moreno Valley  
13 restaurant meeting. After that meeting, what, if any,  
14 conversations did you have with Peanut Butter about Turi  
Estrada, same time period, spring of 2014.

15 Answer: The only thing he told me, try to keep the peace  
16 when you talk to [AE] again because to kick back and to  
17 tell his brother to step back. They don't want him doing  
nothing because he was making wrong calls and they were  
already getting sick of him.

18 AUSA Marmaro: At some point, did you switch over to Team  
19 Peanut Butter?

20 Answer: Yes.

21 AUSA Marmaro: When was that?

22 Answer: It was about a month later, around April 2014.

23 AUSA Marmaro: How did that come about, who invited you to  
24 start working for Peanut Butter?

25 Answer: Peanut Butter invited me personally.

26 AUSA Marmaro: What did he say to you?  
27  
28

1 Answer: He told me, look, we tried to work with Turi  
2 already, we already gave him numerous warnings. He's not  
3 listening, so we're going to strip him. We're going to  
4 take his power. And I like you a lot, and he says, you  
5 are under him and you are out here, you are going to be  
6 one of the first people we're going to come after. I  
7 suggest you come on my team, because I don't want to get  
8 hurt.

9 [REDACTED] Transcripts at 1784-1785.

10 AUSA Marmaro: Same time period, I think you said April  
11 2014, did you attend a meeting with Peanut Butter at the  
12 LA Convention Center?

13 Answer: Yes

14 [REDACTED] Transcripts at 1786:

15 AUSA Marmaro: Did the topic of Domingo Estrada come up?

16 Answer: Yes.

17 AUSA Marmaro: What was discussed about Domingo Estrada?

18 Answer: That they were already fed up with him and  
19 Peanut Butter wanted him dead.

20 AUSA Marmaro: When Peanut Butter said that, what did you  
21 take that to mean?

22 Answer: He wanted him killed.

23 [REDACTED] Transcripts at 1787.

24 AUSA Marmaro: Let's go to the same time period. Did you  
25 attend a meeting in Long Beach with a person who went by  
26 the moniker Polar Bear?

27 Answer: Yes.

28 AUSA Marmaro: And what was discussed at that meeting?

29 [REDACTED] Transcripts at 1787.

1 Answer: Malo said he went to the lawyer's office he  
2 talked to Ere and that they told him they were pushing the  
3 issue that they wanted.<sup>3</sup>

4 [REDACTED] Transcripts at 1788.

5 AUSA Marmaro: [REDACTED], what was your understanding  
6 of what happened at that meeting?

7 Answer: That they wanted Domingo dead.

8 [REDACTED] Transcripts at 1788.

9 AUSA Marmaro: When Ere was telling you about Domingo  
10 Estrada, you guys were talking about it everyday, what  
11 kinds of things was Ere telling you about Domingo Estrada?

12 Answer: Well, what had happened at the time, some people  
13 that were under Peanut Butter, one of them was Dopey and  
14 some other dude named Chato, they were in the Calipatria  
15 Prison. They had got assaulted on Domingo's orders. And  
16 then the fact that Turi didn't authorize it. These people  
17 got stabbed, and that's when they said they finally had  
18 enough of Turi and Domingo. No more talking.

19 AUSA Marmaro: What, if anything, did Ere say about whether  
20 Domingo Estrada -- whether followed through on that green  
21 light?

22 Answer: His main thing he wanted Domingo dead, he wanted  
23 to do it personally.

24 [REDACTED] Transcripts at 1807-8.

25 At this point in the testimony, Mr. Chavez asked for several  
26 sidebars, as the government was connecting Mr. Chavez to murders  
27 about which prosecutors had produced almost no discovery despite  
28 numerous requests:

29 <sup>3</sup> [REDACTED] later claimed that Malo asked Polar  
30 Bear to murder GE at this meeting. Polar Bear returned to  
31 custody on April 15, 2014 and remained incarcerated  
32 continually through GE's murder.

1  
2 COURT: The problem is this, apparently you are saying that  
3 everything that happens - every murder that happens  
4 somehow is connected with what Mr. Chavez says and does.  
You don't have any evidence of that.

5 MR. ELLISON: I disagree. I'm not saying every murder that  
6 happens, what we're saying here is that defendant played a  
7 vital role in communicating whether this order to take  
8 care of Turi Estrada and his associates happened, and that  
9 it was...

10 [REDACTED] Transcripts at 1814.

11 THE COURT: Let me stop. Where is the evidence that Chavez  
12 was somehow connected with the transportation of that  
13 particular evidence insofar as vis-à-vis the murder?

14 MR. ELLISON: So what is consistent with other witness's  
15 testimony in this case, Your Honor, is that when you are  
16 talking to somebody like Domingo, somebody like Radio, who  
17 are Turi Estrada's right-hand men, it's part and parcel of  
18 speaking to them. So when he goes to Pelican Bay to talk  
19 about stripping Turi of his membership, this witness has  
20 already said they assaulted all - everybody under Turi.  
21 That's why he had to go work for Peanut Butter because he  
22 was working for Turi. If he would have continued to work  
23 for Turi, he would be assaulted.

24 COURT: How did he play the role in that?

25 MR. ELLISON: All of the things I just said. The visitation  
26 records corroborating when he went to Pelican Bay. He met  
27 with Mexican Mafia members, the kite that talks about him  
28 going to talk about Turi Estrada and the testimony of  
29 multiple witnesses.

30 MR. MARMARO: Including [REDACTED] and the (April 2014)  
31 kite saying, we were talking about Turi Cuca.

32 [REDACTED] Transcripts at 1816.

33 **The Testimony of Special Agent Talamantez**

1 In sworn testimony before two grand juries, and during Mr.  
2 Chavez's 2022 trial, FBI Special Agent Joseph Talamantez  
3 corroborated the timeline of events described by Mr. Rodriguez and  
4 Mr. Garcia.

5  
6 *2016 GJ Testimony:*

7 [REDACTED]  
8 [REDACTED]  
9 [REDACTED]  
10 [REDACTED]  
11 [REDACTED]  
12 [REDACTED]

13  
14 *2021 GJ Testimony:*

15 In 2021, SA Talamantez confirmed the same timeline when the  
16 government superseded against Mr. Chavez, the first time, in 2016:

17 [REDACTED]  
18 [REDACTED]  
19 [REDACTED]  
20 [REDACTED]  
21 [REDACTED]  
22 [REDACTED]  
23 [REDACTED]

24  
25  
26  
27 <sup>4</sup> The two came to the meeting together. Initial reports do not  
mention issues with AE or GE being discussed at the meeting.

1 At Mr. Chavez's 2022 Trial, SA Talamantez endorsed this  
2 timeline of events yet again:

3 Here are people that have to drop out of the gang or  
4 go into protective custody for a number of reasons. One,  
5 you kind of -- you heard [REDACTED] testify that he was  
6 working on the team of Turi Estrada, and Turi Estrada came  
7 into bad standing. That, by extension, means that  
8 everybody that was working for Turi Estrada is now in bad  
9 standing. They are not cooperating with law enforcement.  
10 They are not providing information, there is no paperwork  
11 on them, but now they have safety concerns so they have  
12 to go into protective custody or drop out. It is not by  
13 their own choice.

14 ***Suppressed Evidence***

15 The evidence that the government suppressed, prior to Mr.  
16 Chavez's 2022 trial, demonstrably reflects that the government's  
17 theory at Mr. Chavez's 2022 trial was wrong. For instance, [REDACTED]  
18 suppressed CDCR file contains countless references to the violence  
19 that erupted across CDCR facilities in **September 2014** as a result of  
20 EME members voting, at that time, to [REDACTED]  
21 [REDACTED]. The  
22 suppressed evidence contradicts the timeline of events that [REDACTED]  
23 [REDACTED] and Talamantez testified to during Mr. Chavez's 2022  
24 trial (tying Mr. Chavez to assisting EME members in their efforts to  
25 kill AE, GE, and DC between February and May 2014).

26 A CDCR report, generated in September 2014, references an order  
27 to stab and assault all of [REDACTED] across CDCR facilities  
28

1 after [REDACTED]. Over the course of three days, CDCR  
2 recorded [REDACTED]<sup>5</sup>:  
3 [REDACTED]  
4 [REDACTED]  
5 [REDACTED]  
6 [REDACTED]  
7 [REDACTED]  
8 [REDACTED]

9 Contrary to testimony elicited during Mr. Chavez's 2022 trial,  
10 suppressed reports indicate that [REDACTED]  
11 [REDACTED]  
12 [REDACTED]. Suppressed reports also indicate that Mr.  
13 [REDACTED] continued to work for [REDACTED]  
14 [REDACTED].  
15 [REDACTED]

16 Mr. Chavez specifically requested information relating to AE  
17 for years. The government produced nothing even though it possessed  
18 the information and was ordered, repeatedly, to disclose it:  
19

- 20 • Prior to trial, AUSA Nelson obtained [REDACTED] Central  
21 and Confidential CDCR files. The files contained dozens and  
22 dozens of reports about [REDACTED]  
23 [REDACTED]

24 [REDACTED] Although AUSA Nelson reviewed these files, the  
25 [REDACTED]

26 <sup>5</sup> The report is heavily redacted and does not even include its  
27 distribution list. [REDACTED]  
28 [REDACTED]

1 government falsely, and repeatedly, asserted that [REDACTED] files  
2 contained nothing discoverable.<sup>6</sup> Additionally, it did not  
3 produce either M [REDACTED]  
4 [REDACTED]  
5 [REDACTED]

- 6 • On April 16, 2021, the USAO charged Robert Hinojos  
7 separately in *United States v. Hinojos*, 21-CR-191-SW. The  
8 indictment in *United States v. Hinojos* contains overt acts  
9 that occurred at Calipatria State Prison. The prosecutors  
10 in Mr. Hinojos's case are the same ones prosecuting Mr.  
11 Chavez. However, the prosecution filed a case information  
12 sheet in the Hinojos case that falsely indicated that  
13 Hinojos's case was unrelated to Mr. Chavez's. That false  
14 representation resulted in Hinojos's case being assigned to  
15 a different judge, Judge Wilson. And that enabled the  
16 government to hide and suppress Hinojos's discovery from  
17 counsel in *Landa*. After filing a new, second superseding  
18 indictment against Chavez in March of 2024, the government  
19 publicly indicated, for the first time, that the conduct in  
20 Mr. Hinojos's indictment was *part of the same conspiracy*  
21 *charged here*. Discovery originally produced in *United*  
22 *States v. Hinojos*, but not to Mr. Chavez (still), includes  
23  
24  
25

26  
27 <sup>6</sup> Mr. Nelson reviewed the files over the course of three days. It  
is unclear why he stopped reviewing files the Saturday before trial.



1 information that the government obtained from Calipatria  
2 State Prison, as specifically charged in that indictment.

- 3 • On April 28, 2015, AUSAs from this US Attorney's Office  
4 and agents from this task force interviewed [REDACTED]  
5 concerning, among other things, [REDACTED]  
6 [REDACTED]  
7 [REDACTED]  
8 [REDACTED].

9 The lead case agent from *United States v. Hinojos*, Michele  
10 Starkey,<sup>8</sup> drafted [REDACTED] 2015 proffer report. CDCR Task  
11 Force Officer John Castaneda was also present during the  
12 proffer. SA Castaneda was CDCR TFO Rene Ramos's supervisor  
13 when Mr. Chavez was arrested. In [REDACTED] 2015 proffer  
14 report, the government notes:  
15  
16

17 \_\_\_\_\_  
18 7 [REDACTED] proffered several times between 2015 and 2017.  
19 Prior to 2023, he never implicated Mr. Chavez in anything [REDACTED]  
20 [REDACTED] He has never met, or spoken to, Mr. Chavez. After reading  
21 about Mr. Chavez's 2022 trial, he implicated Mr. Chavez in the [REDACTED]  
22 [REDACTED].

23 <sup>8</sup> SA Starkey became upset when [REDACTED]  
24 [REDACTED]  
25 [REDACTED]

26 According to a disclosure letter produced this  
27 year, she told AUSAs that she did not believe [REDACTED] was credible.

Starkey was also used to place a telephone call to [REDACTED] in  
2014 to advise him of a threat against his life by [REDACTED].  
That call led [REDACTED]

25 [REDACTED] The  
26 government charged his murder as part of this conspiracy, even  
27 though they have known, since at least 2022, that [REDACTED] murder  
was unrelated to this case. They have not produced that exculpatory  
information to defense counsel still.

1 [REDACTED]  
2 [REDACTED]  
3  
4 Inexplicably, prior to the time Mr. Chavez filed the instant  
5 motion to dismiss on August 2, 2024, the government had only  
6 produced 2023 and 2024 proffer reports for [REDACTED]. The  
7 government finally produced [REDACTED] 2015 and 2017 proffer  
8 reports late last week.

9 In addition to the substantial prejudice that Mr. Chavez  
10 experienced by not being provided with information he needed to  
11 effectively cross examine the government's witnesses, who directly  
12 implicated him in conspiracies to murder three people, the  
13 government unfairly capitalized on this suppressed information when  
14 it filed a Second Superseding Indictment in March 2024. The Second  
15 Superseding Indictment used the suppressed information to materially  
16 change the government's timeline of events with respect to AE, as  
17 demonstrated by SA Talamantez's 2024 GJ testimony:  
18  
19

20 [REDACTED]  
21 [REDACTED]  
22 [REDACTED]  
23 [REDACTED]  
24 [REDACTED]  
25 [REDACTED]

26 [REDACTED]  
27 [REDACTED]

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^^

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Talamantez GJ Testimony at 36-38.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

SA Talamantez testified, for over a dozen pages, about information that was suppressed that the government has now incorporated into numerous new overt acts. Mr. Chavez will not include all references here, as the Court is familiar with the nature of the government's new charging document from Mr. Chavez's previously litigated motion to strike.

B. Mr. Chavez will Continue to Suffer Prejudice if the Case Is Not Dismissed

Beyond the hundreds of pages of suppressed exculpatory evidence relating to AE, the government also knowingly suppressed hundreds of additional pages of exculpatory reports that contained a variety of important information including, but not limited to, prior witness statements that were incompatible with the same witness's trial testimony (e.g., [REDACTED] 2019 debrief reports); LACJ housing records, visitation records; and uncharged misconduct that CWs who testified during Mr. Chavez's 2022 trial engaged in while cooperating against Mr. Chavez. The government's intentional misconduct infected each witness the government used against Mr. Chavez at trial. The prejudice was immeasurable and deprived Mr. Chavez of a fair trial. And it continues today—the government continues to capitalize on its misconduct.

Had the government complied with its discovery obligations, Mr. Chavez would not have testified at his first trial. Had he possessed the suppressed evidence, he would not have had to testify—he would have simply been able to meaningfully cross examine the government's witnesses. Without access to crucial, exculpatory information in the government's possession, he lacked the information that was needed to explain critical topics, including what occurred during his LACJ meeting with [REDACTED] (in which the government, yet again, implicated him in conspiracies to murder

1 other people not related to the AE murders), and all of the events  
2 concerning AE. He cannot now retract his trial testimony. He  
3 cannot erase its existence. Now the government can use it against  
4 him in all future proceedings.  
5

6 Further, Mr. Chavez will never regain his lost opportunity to  
7 secure an acquittal with his first jury. The government's  
8 misconduct robbed the jury of being able to fairly evaluate evidence  
9 of his guilt or innocence. But despite the government's gross  
10 misconduct, the jury still hung 9-3 and 6-6 in favor of acquittal.<sup>9</sup>  
11 Had the government complied with its constitutional and statutory  
12 discovery obligations, it is likely that all jurors would have voted  
13 to acquit.  
14

15 The government's misconduct did not stop with its suppression  
16 of evidence. The government has now utilized the suppressed  
17 evidence to materially change its theory in a Second Superseding  
18 Indictment that it filed after the statute of limitations expired.  
19 For much of this period, Mr. Chavez remained on home confinement as  
20 he fought, unsuccessfully, to exercise his right to a speedy  
21 retrial. The government opposed each of Mr. Chavez's requests to  
22 sever and to proceed to trial. We now know why.  
23  
24  
25

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26  
27 <sup>9</sup> The foreperson indicated that after the first vote, the jury was 9-3 in favor of acquittal on all counts.

1 But the government's misconduct did not stop there, either.  
2 The government continued to suppress the bulk of exculpatory  
3 evidence in its possession until July 31, 2024 - two days before Mr.  
4 Chavez's motion deadline. He had **two days** to review around 1000  
5 pages of heavily redacted, exculpatory reports and file the pending  
6 motion. Two days.

8 Incredibly, the misconduct continued subsequent thereto. Even  
9 after it made its Brady dump on July 31, 2024, the government  
10 continued to suppress proffer reports that revealed that [REDACTED]  
11 [REDACTED] interviewed with this US Attorney's Office, this task force,  
12 and agents who worked on this case back in 2015. Those reports were  
13 just produced a few days ago.

15 This is exactly the type of gross misconduct that warrants a  
16 dismissal. No other remedy would be appropriate.

17 A court may dismiss an indictment under its supervisory powers  
18 when the defendant suffers "substantial prejudice" and where "no  
19 lesser remedial action is available". *United States v. Jacobs*, 855  
20 F.2d 652 (9th Cir.1988). Here, the government has acknowledged that  
21 it suppressed exculpatory evidence, but has proposed a lesser remedy  
22 than dismissal: a retrial with certain discovery sanctions. The  
23 government's proposed remedy is woefully inadequate, would advantage  
24 the government for its misconduct, and should be disallowed.  
25  
26  
27  
^^

1 In *United States v. Ross*, 372 F.3d 1097 (9th Cir. 2004), the  
2 Court stated: "Where the defendant asks the district court to use  
3 its supervisory powers to dismiss an indictment for outrageous  
4 government conduct, the proper prejudice inquiry is whether the  
5 government's conduct "had at least some impact on the verdict and  
6 thus redounded to the defendant's prejudice." This case easily  
7 meets that standard of prejudice. This case was a pure credibility  
8 contest between the government's cooperating witnesses and Mr.  
9 Chavez. The exculpatory evidence that the government willfully  
10 suppressed would have impeached their witnesses' testimony. Without  
11 the benefit of the exculpatory evidence, the jury voted in favor of  
12 acquittal, 9-3. Had the government not suppressed the exculpatory  
13 evidence, an acquittal would have been likely. Regardless, the  
14 suppressed evidence had "at least some impact on the verdict."

15 The prejudice resulting from the government's willful  
16 suppression of evidence is of a sufficiently serious degree to  
17 warrant dismissal of the indictment. A retrial, as suggested by the  
18 government, would substantially prejudice Mr. Chavez for a multitude  
19 of reasons. First, to conduct a new trial at this stage would be  
20 futile because Mr. Chavez's ability to use the newly-disclosed  
21 exculpatory evidence, in light of the government's SSI, would be  
22 meaningless. *United States v. Fitzgerald*, 615 F. Supp. 2d 1156  
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1 (S.D. Cal 2009). Second, the inordinate passage of time, between  
2 the alleged misconduct and now, would result in insurmountable  
3 prejudice. Witnesses are now dead (e.g., [REDACTED]  
4 [REDACTED] credited with killing PB and order hits attributed to Mr.  
5 Chavez), memories have faded, new witnesses cannot be located,  
6 investigatory leads are more difficult, and certain evidence no  
7 longer exists. See *Doggett v. United States*, 505 U.S. 647 (1992)  
8 (noting in the context of a speedy trial claim that "the possibility  
9 that the accused's defense will be impaired by dimming memories and  
10 loss of exculpatory evidence" is "the most serious" type of  
11 prejudice "because the inability of a defendant adequately to  
12 prepare his case skews the fairness of the entire system."). As a  
13 result, Mr. Chavez has forever lost his opportunity to adequately  
14 defend against the charges.

15  
16 Third, Mr. Chavez would be prejudiced because a retrial would  
17 allow the government to revise its case strategy, as evidenced by  
18 the SSI. See *People v. Chapman*, 524 F.3d 1073 (9th Cir. 2008)  
19 (noting mistrial remedy would advantage the government by giving it  
20 a "chance to try out its case, identify any problem areas, and then  
21 correct those problems in a retrial.")

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